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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington
corporation,
Debtor.

MARK D. WALDRON, as Chapter 7
Trustee,

Plaintiff,

vs.

PERKINS COIE LLP, a Washington
limited liability partnership,
LOWELL NESS, a California
resident, GIGA WATT PTE., LTD., a
Singapore corporation, and ANDREY
KUZENNY, a citizen of the Russian
Federation,

Defendants.

-and-

THE GIGA WATT PROJECT, a
partnership,

Nominal Defendant.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

Adv. Case No. 20-80031

**TRUSTEE'S EX PARTE MOTION
TO FILE UNREDACTED
COMPLAINT UNDER SEAL**

EX PARTE MOTION TO
SEAL COMPLAINT – Page 1

1 Mark Waldron, in his capacity as the duly-appointed Chapter 7 Trustee, by
2 and through his attorneys, the Potomac Law Group PLLC, hereby respectfully
3 moves for entry of an Order, in the form attached hereto as **Exhibit A**, authorizing
4 the Trustee to file under seal the unredacted version of the *Complaint for (i)*
5 *Breach of Fiduciary Duty to Giga Watt Inc. (Defendants Perkins Coie, LLP and*
6 *Lowell Ness), (ii) Aiding and Abetting Giga Watt Pte. Ltd. 's Breach of Fiduciary*
7 *Duty to Giga Watt, Inc. (Defendants Perkins Coie, LLP and Lowell ness), (iii)*
8 *Breach of Fiduciary Duty to Giga Watt, Inc. (Defendant Giga Watt Pte. Ltd.) and*
9 *(iv) Aiding and Abetting Breach of Fiduciary Duty (Defendant Kuzenny) (the*
10 *"Complaint")* filed in this adversary proceeding. The defendants are Perkins Coie
11 LLP ("Perkins Coie"), Giga Watt Pte. Ltd., and Andrey Kuzenny. The Giga Watt
12 Project is a nominal defendant.

13 This Motion is brought pursuant to 11 U.S.C. § 105, Fed.R.Civ.P. 5-2,
14 applicable herein, Fed.R.Civ.P. 26 applicable herein, and L.B.R. 9018-1.

15 The Trustee commenced this adversary proceeding by filing a redacted
16 version of the Complaint on the public docket. [[AP ECF No. 1](#)]The redacted
17 material is subject to Perkins Coie's claim of attorney-client privilege.

18 Earlier in the main case, on August 13, 2020, the Court entered the *Order*
19 *Regarding Production of Documents Responsive to Rule 2004 Order and Placing*
20 *Limits on the Use of Confidential Information in Such Documents* [[ECF No. 673](#)]
21 (the "Protective Order"), providing that the Trustee could not file certain
22 information without simultaneously moving for an Order to seal the information.

23 On September 14, 2020, the Court entered the *Stipulated Order Preserving*

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1 *Privilege Pursuant to FRE 502(d)* [[ECF 714](#)] (the “Stipulated Order”) which
2 provides that Perkins Coie’s production of documents to the Trustee would not
3 waive the attorney-client privilege. After entry of these Orders, Perkins Coie
4 produced information to the Trustee that Perkins Coie asserts is subject to the
5 attorney-client privilege. The Protective Order provides:

6 Confidential documents, or information derived from Confidential
7 documents, ***shall not be filed with the Court or included in***
8 ***pleadings . . . except when such information and documents and***
portion(s) of such pleadings. . . that reference such material are
accompanied by a motion to seal pursuant to LBR 9018-1. . . .

9 Protective Order at ¶ 4. Therefore, the Trustee can only file the unredacted version
10 of the Complaint under seal. The motion for Protective Order was filed on regular
11 notice. No one objected.

12 This Court may seal its records pursuant to its inherent supervisory power
13 over such documents. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598, 98
14 S.Ct. 1306, 55 L.Ed.2d 570 (1978) (“Every court has supervisory power over its
15 own records and files”). A party seeking to file under seal a dispositive document,
16 such as the Complaint, must state a compelling reason justifying sealing and
17 overcoming the presumption in favor of public disclosure. The movant must also
18 show specific prejudice or harm if the materials were not filed under seal. *Foltz v.*
19 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (a party may
20 overcome that presumption by supporting their compelling reasons with specific
21 factual findings outweighing the general history of access and disclosure). *See*
22 *also Dahmen v. Liberty Mutual Group, Inc.*, 2016 WL 11496710, at *1 (E.D.
23 Wash., 2016).

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25 SEAL COMPLAINT – Page 3

1 Filing a redacted version of the Complaint and a sealed version of the
2 Complaint will balance the dictates of the Protective Order against the interest of
3 disclosure. *See Dahmen, supra* (pursuant to Federal Rule of Civil Procedure
4 5.2(d), a court may order that a filing be made under seal without redaction with a
5 redacted version filed for the public record).

6 The Defendants will be served the unredacted version of the Complaint.
7 Such service will not violate the Protective Order because Giga Watt Pte. Ltd. and
8 Andrey Kuzenny are the parties who would hold any privilege that is being
9 protected by this Motion. This Motion benefits Ness and Perkins Coie by
10 preserving their privilege claim until further Court Order, if any.

11 Finally, the Trustee intends to confer with Perkins Coie and may move for
12 an Order finding that the material subject to the Protective Order is excepted from
13 the attorney-client privilege. If agreement is reached or an Order entered, the
14 Trustee will then move to unseal the Complaint and to file the unredacted version.

15 WHEREFORE, the Trustee respectfully requests that the Court enter an
16 Order granting this Motion in the form attached hereto as **Exhibit A** and granting
17 such other and further relief as the Court deems appropriate and just.

18 Dated: November 18, 2020

POTOMAC LAW GROUP PLLC

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20 By: /s/ Pamela M. Egan
21 Pamela M. Egan (WSBA No. 54736)
22 *Attorneys for Mark D. Waldron, Chapter 7*
23 *Trustee, Plaintiff*

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